

The Committee recommendation includes the budget request of \$1,356,000 for activities at Amchitka Island, Alaska.

The Committee also encourages the Office of Environmental Management to assess the capabilities of the Fire Training Academy in Elko, Nevada, to determine if it has utility to the Department as a place to conduct environmental management training activities. The Department should report back to the House and Senate Committees by December 31, 2003.

The conferees are aware that the resolution of the Pit 9 dispute at the Idaho National Engineering and Environmental Laboratory has been in process for over 5 years at the cost of tens of millions of dollars in legal expenses with no appreciable progress. In the Statement of the Managers accompanying the fiscal year 2003 Omnibus Appropriations Act, the Department of Energy was directed to participate in mediation and failing that to go to binding arbitration to end this dispute and proceed with clean up activities. The conferees note with disappointment that the Department has made little or no progress toward that end. The Pit 9 litigation should be brought to an end as expeditiously as possible.

Carlsbad Field Office.—The recommendation includes an additional \$3,500,000 which shall be made available to the Carlsbad community for educational support, infrastructure improvements, and related initiatives to address the impacts of accelerated operations.

The Committee understands that the Carlsbad Field Office has established a joint task force with the City of Carlsbad to evaluate the needs, functions, and requirements of a record center in Carlsbad. In order to provide more timely information in a useable format to citizens, researchers, stakeholders, and regulators, the Committee provides an additional \$2,000,000 directs the Department to consolidate at Carlsbad, all record archives relevant to the operations of WIPP and the TRU waste in the repository.

The Committee directs the Department to utilize up to \$5,000,000 from within funds available to the Office of Environmental Management to support the important work of the National Border Technology Partnership Program to reduce waste streams that threaten public health and safety in collaboration with the United States-Mexico Border Health Commission.

Waste Analysis Requirements for the Waste Isolation Pilot Plant.—The Committee recognizes that the WIPP facility is central to the cleanup of the nuclear weapons complex and that waste should be emplaced as quickly and safely as possible—for reasons of reducing clean-up costs, public safety, and with the growing threat of radiological terrorism, for national security. Current law and regulation regarding the sampling and analysis of waste destined for WIPP produces substantial health and safety risks to workers with little if any corresponding public benefit. Both the New Mexico Environmental Evaluation Group, an independent WIPP oversight group, and the National Academy of Sciences have strongly suggested that waste destined for disposal at WIPP should not undergo hazardous waste sampling and analysis. To this end, the Committee believes that eliminating dangerous and excessive waste confirmation requirements that offer little if any benefit to the health and safety of the public will serve the national interests

inherent in the safe and expeditious cleanup of the nuclear weapons complex. For these reasons, the Committee has included language in section 310 that requires that waste characterization be limited to determining that the waste is not ignitable, corrosive, or reactive. This confirmation will be performed using radiography or visual examination of a representative subpopulation of the waste. The language further directs the Secretary of Energy to seek a modification to the WIPP Hazardous Waste Facility Permit to implement the provisions of this bill by December 31, 2003. The Committee recommendation includes \$1,000,000 for regulatory and technical assistance to the State of New Mexico to amend the existing WIPP Hazardous Waste Permit to comply with the provisions of the bill.

SAFEGUARDS AND SECURITY

The Committee recommendation includes \$299,977,000, the same as the request. The safeguards and security line identifies the funding necessary for all safeguard and security requirements for sites at which Office of Environmental Management has responsibility. This includes activities related to site-specific safeguards and security plans; facilities master security plans, cyber security plans, and personnel security programs at EM sites.

TECHNOLOGY DEVELOPMENT AND DEPLOYMENT

The Committee recommendation includes \$85,080,000, an increase of \$21,160,000 over the budget request. This program focuses on high priority technical needs at near-term closure sites and projects. In addition, the technology program will focus on identifying technical vulnerabilities and alternative solutions in support of the Department's accelerated cleanup strategies.

Within available funds, the Committee provides \$6,000,000 for the Western Environmental Technology Office; \$6,000,000 for the Diagnostic Instrumentation and Analysis Laboratory; and \$4,350,000 for the University Research Programs in Robotics.

The Committee recommendation includes \$4,000,000 for the subsurface science research institute under development with Idaho National Laboratory and the Inland Northwest Research Alliance [INRA] institutions.

The Department is directed to renew its cooperative agreements with the University of Nevada-Las Vegas through its Research Foundation, and the University of Nevada-Reno.

The Department shall continue its support of the Tribal Colleges Initiative grant, involving Crownpoint Institute of Technology, Diné College, Southwestern Indian Polytechnic Institute, to develop high-quality environmental programs at tribal colleges.

The Committee recommendation includes an additional \$4,000,000 for continued support of the international agreement and collaboration with AEA Technology to address alternative cost effective technologies for cleaning up legacy waste.

FUNDING ADJUSTMENTS

The Committee recommendation for Defense Site Acceleration Completion includes a funding adjustment of \$65,000,000 for use of

prior year balances and anticipated schedule slippage, a reduction of \$15,924,000 from the current year level.

DEFENSE ENVIRONMENTAL SERVICES

Appropriations, 2003	\$0
Budget estimate, 2004	995,179,000
Committee recommendation	987,679,000

The Defense Environmental Services account funds defense related activities that indirectly support the primary environmental management mission of accelerated risk reduction and closure. The programs and activities are funded within the following subprograms.

COMMUNITY AND REGULATORY SUPPORT

The Committee recommendation includes \$63,837,000, an increase of \$2,500,000 over the request. This program funds activities that are indirectly related to on-the-ground cleanup results and are integral to the Department's ability to conduct cleanup at sites (for example, Agreements in Principle with State regulators and tribal nations, and Site Specific Advisory Boards).

The Committee recommendation includes an additional \$2,500,000 for the Waste Management Education and Research Consortium consistent with the terms of its cooperative agreement with the Department. From within available funds, \$500,000 shall be used to support the Energy and Environmental Hispanic Community Participation project of the Self Reliance Foundation needed to increase Hispanic community understanding of and participation in environmental management initiatives of the Department.

The Committee encourages the Department of Energy to continue to work collaboratively with the Western States to reach consensus on mutually agreeable routes for the transportation of transuranic nuclear waste to the Waste Isolation Plant in New Mexico. The Committee believes that the success of the WIPP Program Implementation Guide agreed to by the Department and the Western Governor's Association can be attributed to the cooperative relationship between the States and DOE. The Committee urges DOE to continue to work in a cooperative fashion with the States toward consensus and concurrence on proposed shipping routes.

FEDERAL CONTRIBUTION TO THE URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING (D&D) FUND

The Committee recommendation includes \$452,000,000, the same as the budget request. This program funds the Federal Government contribution to the Uranium Enrichment D&D Fund, as required by the Energy Policy Act of 1992.

NON-CLOSURE ENVIRONMENTAL ACTIVITIES

The Committee recommendation includes \$189,698,000, the same as the budget request. This program funds ongoing activities that indirectly support the Environmental Management accelerated cleanup and closure mission. These activities provide valuable support to other Departmental priorities and missions.

Language is included under section 304 which prohibits the use of funds in this Act to initiate requests for proposals or expression of interest for new programs which have not yet been presented to Congress in the annual budget submission, and which have not yet been approved and funded by Congress. A similar provision was contained in the Energy and Water Development Act, 2003.

Language is included under section 305 which permits the transfer and merger of unexpended balances of prior appropriations with appropriation accounts established in this bill. A similar provision was contained in the Energy and Water Development Act, 2003.

Language is included under section 306 that prohibits the use of funds by the Bonneville Power Administration to enter into energy efficiency contracts outside its service area.

Language is included under section 307 which provides that the Administrator of the National Nuclear Security Administration may authorize 2 percent of the amount allocated to a nuclear weapons production plant for the production plant to engage in research, development, and demonstration activities with respect to the Engineering and manufacturing capabilities of the plant in order to maintain and enhance such capabilities at the plant. A similar provision was contained in the Energy and Water Development Act, 2003.

Language is included in section 308 specifically authorizing intelligence activities pending enactment of the fiscal year 2004 Intelligence Authorization Act.

Language is included under section 309 which provides that none of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or generated after such date. A similar provision was contained in the Energy and Water Development Act, 2003.

Language is included in section 310 that requires that waste characterization at WIPP be limited to determining that the waste is not ignitable, corrosive, or reactive. This confirmation will be performed using radiography or visual examination of a representative subpopulation of the waste. The language directs the Department of Energy to seek a modification to the WIPP Hazardous Waste Facility Permit to implement the provisions of this bill by December 31, 2003.

Language is included in section 311 that allows the Department to dispose of certain waste at Fernald, Ohio as "byproduct material" as defined by section 11e.(2) of the Atomic Energy Act.

Language is included in section 312 that requires the Secretary to collect fees for Army Corps of Engineers hydropower operation and maintenance funding under certain conditions.

Public Law 108-137
108th Congress

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

Dec. 1, 2003

[H.R. 2754]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, for energy and water development, and for other purposes, namely:

Energy and
Water
Development
Appropriations
Act, 2004.

TITLE I

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to rivers and harbors, flood control, shore protection, aquatic ecosystem restoration, and related purposes.

—GENERAL INVESTIGATIONS

For expenses necessary for the collection and study of basic information pertaining to river and harbor, flood control, shore protection, aquatic ecosystem restoration, and related projects, restudy of authorized projects, miscellaneous investigations, and, when authorized by law, surveys and detailed studies and plans and specifications of projects prior to construction, \$118,949,000, to remain available until expended; *Provided*, That for the Ohio Riverfront, Cincinnati, Ohio, project, the cost of planning and design undertaken by non-Federal interests shall be credited toward the non-Federal share of project design costs; *Provided further*, That in conducting the Southwest Valley Flood Damage Reduction Study, Albuquerque, New Mexico, the Secretary of the Army, acting through the Chief of Engineers, shall include an evaluation of flood damage reduction measures that would otherwise be excluded from the feasibility analysis based on policies regarding the frequency of flooding, the drainage areas, and the amount of runoff; *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$250,000 for preconstruction engineering and design of Waikiki Beach, Oahu,

(TRANSFERS OF UNEXPENDED BALANCES)

SEC. 305. The unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this title. Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 306. None of the funds in this or any other Act for the Administrator of the Bonneville Power Administration may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

SEC. 307. When the Department of Energy makes a user facility available to universities and other potential users, or seeks input from universities and other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When the Department of Energy considers the participation of a university or other potential user as a formal partner in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a partner. For purposes of this section, the term "user facility" includes, but is not limited to: (1) a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13503(a)(2)); (2) a National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and (3) any other Departmental facility designated by the Department as a user facility.

SEC. 308. The Administrator of the National Nuclear Security Administration may authorize the manager of a covered nuclear weapons research, development, testing or production facility to engage in research, development, and demonstration activities with respect to the engineering and manufacturing capabilities at such facility in order to maintain and enhance such capabilities at such facility: *Provided*, That of the amount allocated to a covered nuclear weapons facility each fiscal year from amounts available to the Department of Energy for such fiscal year for national security programs, not more than an amount equal to 2 percent of such amount may be used for these activities: *Provided further*, That for purposes of this section, the term "covered nuclear weapons facility" means the following:

- (1) the Kansas City Plant, Kansas City, Missouri;
- (2) the Y-12 Plant, Oak Ridge, Tennessee;
- (3) the Pantex Plant, Amarillo, Texas;
- (4) the Savannah River Plant, South Carolina; and
- (5) the Nevada Test Site.

SEC. 309. Funds appropriated by this or any other Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2004 until the enactment of the Intelligence Authorization Act for fiscal year 2004.

50 USC 2812
note.

SEC. 310. None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date. For the purposes of this section, the material categories of transuranic waste at the Rocky Flats Environmental Technology Site include: (1) ash residues; (2) salt residues; (3) wet residues; (4) direct repackaging residues; and (5) scrub alloy as referenced in the "Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site".

SEC. 311. (a) The Secretary of Energy is directed to file a permit modification to the Waste Analysis Plan (WAP) and associated provisions contained in the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP). For purposes of determining compliance of the modifications to the WAP with the hazardous waste analysis requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or other applicable laws waste confirmation for all waste received for storage and disposal shall be limited to: (1) confirmation that the waste contains no ignitable, corrosive, or reactive waste through the use of either radiography or visual examination of a statistically representative subpopulation of the waste; and (2) review of the Waste Stream Profile Form to verify that the waste contains no ignitable, corrosive, or reactive waste and that assigned Environmental Protection Agency hazardous waste numbers are allowed for storage and disposal by the WIPP Hazardous Waste Facility Permit.

(b) Compliance with the disposal room performance standards of the WAP shall be demonstrated exclusively by monitoring airborne volatile organic compounds in underground disposal rooms in which waste has been emplaced until panel closure.

SEC. 312. Notwithstanding any other provision of law, the material in the concrete silos at the Fernald uranium processing facility currently managed by the Department of Energy and the ore processing residual materials in the Niagara Falls Storage Site subsurface waste containment structure managed by the United States Army Corps of Engineers under the Formerly Utilized Sites Remedial Action Program shall be considered "byproduct material" as defined by section 11e.(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e)(2)). The Nuclear Regulatory Commission or an Agreement State, as appropriate, shall regulate the material as "11e.(2) by-product material" for the purpose of disposition of the material in an NRC-regulated or Agreement State-regulated facility.

Deadline.
Reports

SEC. 313. No funds appropriated or otherwise made available under this title under the heading "ATOMIC ENERGY DEFENSE ACTIVITIES" may be obligated or expended for additional and exploratory studies under the Advanced Concepts Initiative until 30 days after the date on which the Administrator for Nuclear Security submits to Congress a detailed report on the planned activities for additional and exploratory studies under the initiative for fiscal year 2004. The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 314. MARTIN'S COVE LEASE. (a) DEFINITIONS.—In this section:

108TH CONGRESS }
1st Session }

HOUSE OF REPRESENTATIVES

{ REPORT
108-357

MAKING APPROPRIATIONS FOR ENERGY AND WATER DE-
VELOPMENT FOR THE FISCAL YEAR ENDING SEP-
TEMBER 30, 2004, AND FOR OTHER PURPOSES

NOVEMBER 7, 2003.—(Ordered to be printed)

Mr. HOBSON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2754]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2754) "making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, for energy and water development, and for other purposes, namely:

TITLE I

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the

share interdependent vulnerability. Given that technologies exist in the marketplace to protect plant-level control systems, the conferees encourage the Federal Energy Regulatory Commission to ensure that process control systems, switching stations, and substations are adequately protected by any cyber security standards issued for the national power grid.

The conferees have concerns regarding the continuing impacts of Enron's past business practices on electricity customers in Nevada wherein Enron Power Marketing, Inc., terminated forward power contracts it entered into with Sierra Pacific Power Company and Nevada Power Company and is now seeking under bankruptcy protection to enforce full collection of termination payments for such contracts even though no power was ever delivered. In addition to the substantial record of fraud and market manipulation which has been established through Congressional oversight, the FERC, based upon its own investigation has appropriately sanctioned Enron with a "death penalty" prohibition against participation in the energy trading business in the future. The conferees expect FERC to review carefully the uniquely inequitable circumstances such as those in Nevada which could result in additional adverse impacts on electricity consumers resulting from Enron's past illegal activities. Further, the conferees encourage FERC to view any contract for the sale of electric energy at wholesale that contains rates, terms, or conditions affected by any manipulative or fraudulent activity to be deemed contrary to the public interest.

GENERAL PROVISIONS

DEPARTMENT OF ENERGY

Sec. 301. The conference agreement modifies bill and report language proposed by the House requiring competition of certain management and operating (M&O) contracts of the Department of Energy. This section applies to those M&O contracts that were awarded non-competitively over fifty years ago (i.e., fifty years prior to the start of fiscal year 2004). The affected contracts are specifically identified as: Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory.

Subsection (a) limits the use of appropriated funds to pay for these contracts unless the Secretary, not later than 60 days after enactment of this Act, notifies Congress and publishes in the Federal Register a notice of his decision to compete these contracts when their current terms expire. Subsection (a)(2) allows the Secretary to use a reasonable amount of funds to maintain operations of these contracts during the 60-day period beginning on the date of enactment of this Act.

The conferees recognize the challenges inherent in competing these contracts, especially those that are currently managed by non-profit educational institutions and those that are located on university property. The conferees expect that the Secretary's Blue Ribbon Commission on the Use of Competitive Procedures for DOE Laboratories will advise the Secretary how to address these challenges. Further, the conferees recognize the difficulties of com-

peting these five laboratory contracts over the next two fiscal years, which is the time span during which the current contracts will expire. The conferees expect the Secretary to use the flexibility provided by subsection (a)(3) to stagger the award dates for these five contracts, so that incumbents and other potential bidders do not have to compete for multiple contracts with the same award date, as would be the case with the Argonne-East and Argonne-West contracts.

The conferees strongly encourage the Secretary to use the competitive procedures outlined in 41 U.S.C. 253. The exemption from full and open competition for federally funded research and development centers (FFRDCs), as provided in 41 U.S.C. 253(c)(3), shall not be used as a rationale for not competing these five laboratory contracts. The Department has successfully competed a number of contracts for other DOE laboratories that have been, and continue to be, designated as FFRDCs, and the FFRDC status of the five laboratories that are the subject of this section should not be used to avoid competition for those contracts. The Secretary may, however, use the flexibility provided in 41 U.S.C. 253 to tailor a procurement that will attract both for-profit and non-profit bidders.

Sec. 302. The conference agreement includes a provision proposed by the House and Senate that none of the funds may be used to prepare or implement workforce restructuring plans or provide enhanced severance payments and other benefits and community assistance grants for Federal employees of the Department of Energy under section 3161 of the National Defense Authorization Act of Fiscal Year 1993, Public Law 102-484. This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 303. The conference agreement includes a provision proposed by the House and Senate that none of the funds may be used to augment the \$13,400,000 made available for obligation for severance payments and other benefits and community assistance grants unless the Department of Energy submits a reprogramming request-subject to approval by the appropriate Congressional committee. This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 304. The conference agreement includes a provision proposed by the House and Senate that none of the funds may be used to prepare or initiate Requests for Proposals for a program if that program has not been funded by Congress in the current fiscal year. This provision also precludes the Department from initiating activities for new programs which have been proposed in the budget request, but which have not yet been funded by Congress. This provision has been carried in previous Energy and Water Development Appropriations Acts.

(TRANSFERS OF UNEXPENDED BALANCES)

Sec. 305. The conference agreement includes a provision proposed by the House and Senate that permits the transfer and merger of unexpended balances of prior appropriations with appropriation accounts established in this bill. This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 306. The conference agreement includes a provision proposed by the House and Senate prohibiting the Bonneville Power Administration from performing energy efficiency services outside the legally defined Bonneville service territory unless the Administrator certifies in advance that such services are not available from private sector businesses. This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 307. The conference agreement includes a provision proposed by the House establishing certain notice and competition requirements for Department of Energy user facilities. This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 308. The conference agreement includes a provision proposed by the House and Senate allowing the Administrator of the National Nuclear Security Administration to authorize certain nuclear weapons production plants, including the Nevada Test Site, to use not more than 2 percent of available funds for research, development and demonstration activities. This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 309. The conference agreement includes a provision proposed by the House and Senate which would authorize intelligence activities of the Department of Energy for purposes of section 504 of the National Security Act of 1947 until enactment of the Intelligence Authorization Act for fiscal year 2004.

Sec. 310. The conference agreement includes a provision proposed by the Senate limiting the types of waste that can be disposed of in the Waste Isolation Pilot Plant in New Mexico. None of the funds may be used to dispose of transuranic waste in excess of 20 percent plutonium by weight for the aggregate of any material category. At the Rocky Flats site, this provision includes: ash residues; salt residues; wet residues; direct repackaging residues; and scrub alloy as referenced in the "Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site". This provision has been carried in previous Energy and Water Development Appropriations Acts.

Sec. 311. The conference agreement includes a provision that requires that waste characterization at WIPP be limited to determining that the waste is not ignitable, corrosive, or reactive. This confirmation will be performed using radiography or visual examination of a representative subpopulation of the waste. The language directs the Department of Energy to seek a modification to the WIPP Hazardous Waste Facility Permit to implement the provisions of this section.

Sec. 312. The conference agreement modifies a provision proposed by the Senate allowing the disposal of certain waste at Fernald, Ohio, and the Niagara Falls Storage Site as "byproduct material" as defined by section 11e.(2) of the Atomic Energy Act.

Sec. 313. The conference agreement includes a provision proposed by the Senate limiting the funds that may be expended under the Advanced Concepts Initiative.

Sec. 314. The conference agreement modifies a provision proposed by the Senate relating to the Martin's Cove lease.

of completing clean up activities decades earlier than planned. The acceleration agreements entered into at the various clean-up sites have allowed the Department to book huge paper out-year savings and acceleration of completion dates. For example, the Department is claiming savings of \$12,000,000,000 and 20 years at the Savannah River Site, South Carolina; \$30,000,000,000 and 35 years at Hanford, Washington; \$2,000,000,000 and 6 years at Oak Ridge, Tennessee; and \$19,000,000,000 and 35 years at Idaho. In many cases the savings are based on assumed changes in law, yet-to-be reformed regulatory environments, contractor savings, and other highly optimistic assumptions. The Department has had its successes, most notably Rocky Flats, Colorado, and should be commended. But even with such highlights, the weight of the historical record leaves the Committee to question who will be around in the future (other than the taxpayers) when these estimated cost savings will inevitably be revised.

Mr. President, I respect Secretary Roberson's efforts to encourage innovation in the program. Last February, she proposed a new initiative aimed at accelerating cleanup at DOE's sites and focusing on more rapid reduction of the considerable environmental risks. She projects this will cut years off the program and produce \$63 billion in savings.

Now that GAO has issued its first report on the acceleration initiative, I hope the chairman will join me in examining their findings and recommendations and identifying actions that we may recommend to the conference.

Mr. DOMENICI. The Senator has my assurance that GAO's report and recommendations will be carefully analyzed and that I will work with him to ensure that they are considered as we work toward conference.

Mr. COCHRAN. I thank the chairman and urge that he give special attention to the following GAO recommendation:

DOE's accelerated cleanup initiative should mark the beginning, not the end, of DOE's efforts to identify other opportunities to improve the program by accomplishing the work more quickly, more effectively, or at less cost. As DOE continues to pursue other management improvements, it should reassess certain aspects of its current management approach, including the quality of the analysis underlying key decisions, the adequacy of its approach to incorporating new technologies into projects, and the merits of a fast-track approach to designing and building complex nuclear facilities. Although the challenges are great, the opportunities for program improvements are even greater. Therefore, DOE must continue its efforts to clean up its high-level waste while demonstrating tangible, measurable program improvements.

This recommendation underscores my view that DOE should continue to develop and test new technologies, which may have the potential to provide price and schedule savings. Since 1996, our committee has recommended that DOE investigate alternative melting technologies, including the advanced vitrification system, to back-up the baseline system. These recommendations came from the National Academy of Sciences and from DOE's own sponsored studies.

Pursuing backup systems has always made sense. As GAO points out, the risks inherent in the chemical composition of the tanks require a backup approach as insurance. As our committee report explains, "the weight of the historical record" often requires us to ask "who will be around in the future (other than the taxpayers) when these estimated cost savings will inevitably be revised."

Mr. DOMENICI. I share the Senator's concerns and will inquire about GAO findings and will join you in urging the Department to give priority to developing technologies that are different from the baseline system and could provide an insurance policy.

Mr. COCHRAN. Mr. President, I appreciate the Senator's response and request his efforts in conference to encourage DOE to evaluate and demonstrate backup technologies that have shown potential to provide cost and schedule savings in the program.

Mr. DOMENICI. I appreciate the Senator raising these issues, and I urge the Department to carefully consider his thoughtful comments and recommendations.

Mr. COCHRAN. I thank the chairman and appreciate his leadership.

U.S. ARMY CORPS OF ENGINEERS' OPERATION AND MAINTENANCE FUNDING FOR NOXIOUS WEED CONTROL AT LAKE SAKAKAWEA, GARRISON DAM, ND

Mr. CONRAD. Mr. President, I commend the leadership of the Appropriation Committee, and particularly subcommittee Chairman DOMENICI and Senator REID for their work on this bill. I bring to the chairman's attention a troubling problem we have in North Dakota around Lake Sakakawea, a reservoir controlled by the U.S. Army Corps of Engineers. As water levels drop, more of the land around the lake owned by the Corps becomes exposed, which is a perfect habitat for noxious weeds. In fact, an additional 140,000 acres have become exposed due to low water levels causing explosive growth.

The spread of noxious weeds is directly impacting farmers, ranchers, and other landowners in the vicinity of Lake Sakakawea. These landowners are responsible for controlling noxious weeds on their land; however, their efforts are futile when their land can be easily contaminated from weeds on Corps land. Unless the Corps has more resources to fight the noxious weeds, landowners will continue to face an uphill battle.

Mr. REID. I, too, am concerned about the situation around Lake Sakakawea and appreciate my colleague from North Dakota for bringing this to our attention. I agree that the Corps of Engineers has an obligation to address it, and I would be happy to work with my colleagues to identify additional funds to tackle the noxious weeds around Lake Sakakawea.

Mr. DORGAN. Mr. President, I thank my colleague from Nevada for his support, and I would like to work with

him and the chairman of our subcommittee to find additional funding to combat this growing problem in the energy and water conference. Right now, the Corps is stretched thin financially and, as a result, it cannot keep pace with this expansive and growing problem. The Corps has a clear responsibility to address this problem and it cannot be ignored. It is my hope that the Corps will dedicate funds to controlling this weed problem from the money that would be provided from the amendment offered by Chairman DOMENICI and Senator REID that would add \$65 million to the Corps operations and maintenance budget. The low lake level is due to the persistent drought plaguing much of the West, and I believe that the Corps has a responsibility to address problems on its lands resulting from weather-related conditions.

Mr. DOMENICI. I recognize the situation faced by those around Lake Sakakawea, and I will work with you to address this problem as we move this bill to the Energy and Water Appropriations conference.

SECTION 310

Mr. BINGAMAN. Mr. President, will the chairman yield for a question?

Mr. DOMENICI. I will be happy to yield.

Mr. BINGAMAN. Mr. President, section 310 of the current legislation directs the Secretary of Energy to file a permit modification to the Waste Isolation Pilot Plant's WIPP, Waste Analysis Plan, WAP. Section 310(a) requires that for determining compliance with the Solid Waste Disposal Act, 42 U.S.C. 6901 et. seq., and any other applicable laws, all waste received for storage and disposal shall be limited in confirmation that it contains no ignitable, corrosive or reactive waste through the use of radiography or visual examination of a statistically representative population of waste; and in review of the waste stream profile form to verify that the waste contains no ignitable, corrosive or reactive waste. Section 310(b) requires that compliance shall be monitored exclusively in the WIPP underground rooms through airborne monitoring of volatile inorganic compounds.

Mr. DOMENICI. Mr. President, the Senator is correct.

Mr. BINGAMAN. Mr. President, is the chairman aware of an ongoing study, due December 2003, by the National Academy's Board on Radioactive Waste Management regarding waste characterization requirements for contact handled transuranic waste to be disposed of at the WIPP facility?

Mr. DOMENICI. Mr. President, yes I am aware that there has been ongoing scientific studies in this area.

Mr. BINGAMAN. Mr. President, will the chairman agree that as section 310 undergoes conference with the House and the language is considered that it is consistent with the ongoing study by the National Academy?

Mr. DOMENICI. Yes, I believe the provision has been developed based



upon sound science and will be glad to compare the National Academy report with section 310.

Mr. BINGAMAN. Mr. President, I thank the chairman for taking the time to discuss this matter with me.

Mr. JEFFORDS. Mr. President, I have agreed not to offer my amendment which would have required the submission to the Committee on Environment and Public Works of a log of documents relating to New Source Review at the Department of Energy by a time certain. My agreement is based on a promise from the Department made to my staff today. The Department has committed that this log will be delivered to me and the committee within the next few days. I ask unanimous consent that a September 25, 2002, letter from the Department to me, as then chairman of the committee, be printed in the RECORD following my remarks. This letter promised delivery of the document log by October 24, 2002, yet the Department failed to provide that log.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF ENERGY,
Washington, DC, September 25, 2002.

Hon. JAMES M. JEFFORDS,

Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in further response to your December 10, 2001, letter to Secretary Abraham requesting certain documents in the possession of the Department of Energy (DOE) and related to Environmental Protection Agency's (EPA) review of its New Source Review (NSR) program. This supplements our earlier acknowledgment of your request on March 1, 2002, as well as a letter earlier today that transmitted certain documents that are arguably responsive to your request.

Based on conversations with Committee staff following our letter from earlier this afternoon, we understand that the Committee staff is interested in what additional responsive documents DOE has located and what our intentions are with respect to those documents. Other than Congressional testimony and the like, which we understand not to be covered by the Committee's request, the additional arguably responsive documents DOE has located consist of Internal Administration communications regarding the ongoing development of proposed and final rules.

We understand that EPA has previously indicated to you its concerns providing internal executive branch deliberative communications of this nature but has also indicated that it wants to continue to work with the Committee on a cooperative basis. We further understand that you have reached agreement with EPA regarding how these interests may be accommodated. We share EPA's wish to work out a reasonable accommodation of these interests, and stand ready to provide you these materials on the same basis as that set out in EPA's letter to you of today.

Specifically, on or before October 24, 2002, we will provide the Committee the 1996 NSR rulemaking documents responsive to Items I through V of your December 19, 2002 request. With respect to documents responsive to Items II and IV of your request, we will continue discussions with the Committee to reach a mutually acceptable accommodation for the delivery and protection of information

that is attorney work product or otherwise protected by law. With respect to documents responsive to your request that related to the upcoming proposed rule, we agree to continue to discuss our respective positions on Congressional access to those documents. In the meantime, and not later than October 24, 2002, we will produce a log of documents responsive to your request that relate to the upcoming rules on new source review. Finally, with respect to any responsive documents we locate that are not addressed above, including responsive documents related to the NSR "90 day review," we will provide these to the Committee by October 24, 2002, on the same basis as EPA.

If you have any questions regarding this matter, please call me or have a member of your staff call me.

Sincerely,

DAN R. BROUILLETTE,

Assistant Secretary for

Congressional and Intergovernmental Affairs.

Mr. NICKLES. Mr. President, I rise in support of H.R. 2754, the fiscal year 2004 Energy and Water Appropriations bill, as reported by the Senate Committee on Appropriations.

I commend the distinguished chairman and the ranking member for bringing the Senate a carefully crafted spending bill within the subcommittee's 302(b) allocation and consistent with the discretionary spending cap for 2004.

The pending bill provides \$27.3 billion in discretionary budget authority and \$27.3 billion in discretionary outlays in fiscal year 2004 for the Department of Energy, the Bureau of Reclamation, and the Corps of Engineers.

The bill is \$1 million below the subcommittee's 302(b) allocation for budget authority and \$47 million in outlays below the 302(b) allocation. The bill provides \$511 million more in budget authority and \$483 million more in outlays than the President's budget request, and \$1.2 billion in budget authority and \$1.8 billion in outlays more than the 2003 enacted level.

I am concerned that there may be an amendment to add \$125 million in emergency funding for the Corps of Engineers. This amendment, if offered, will have a Budget Act violation and I will not be able to support it.

I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD at the conclusion of my remarks. I urge the adoption of the bill as it was reported from committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1424. ENERGY AND WATER APPROPRIATIONS, 2004:
SPENDING COMPARISONS—SENATE-REPORTED BILL

(Fiscal year 2004, in millions of dollars)

	General purpose	Mandate- ary	Total
Senate-reported bill			
Budget authority	27,302	—	27,302
Outlays	27,302	—	27,302
Senate Committee allocation			
Budget authority	27,303	—	27,303
Outlays	27,350	—	27,350
2003 level			
Budget authority	26,156	—	26,156
Outlays	25,865	—	25,865
President's request			
Budget authority	26,531	—	26,531
Outlays	25,382	—	25,382

S. 1424. ENERGY AND WATER APPROPRIATIONS, 2004:
SPENDING COMPARISONS—SENATE-REPORTED BILL
Continued

(Fiscal year 2004, in millions of dollars)

	General purpose	Mandate- ary	Total
Outlays	26,829	—	26,829
House-passed bill			
Budget authority	27,000	—	27,000
Outlays	27,173	—	27,173

SENATE-REPORTED BILL COMPARED TO

Senate 302(b) allocation:			
Budget authority	(1)	—	(1)
Outlays	(47)	—	(47)
2003 level:			
Budget authority	1,156	—	1,156
Outlays	1,757	—	1,757
President's request:			
Budget authority	511	—	511
Outlays	483	—	483
House-passed bill:			
Budget authority	732	—	732
Outlays	139	—	139

Note: Details may not add in totals due to rounding. Totals adjusted for consistency with underlying estimates.
Prepared by SPC Majority Staff, July 21, 2002.

Mrs. MURRAY. Mr. President, I wish to address two parts of the Senate energy and water bill that are extremely important to Washington State: the environmental cleanup program, which impacts the Hanford Nuclear Reservation, and the Army Corps of Engineers.

First, let me express my deep appreciation to Chairman DOMENICI and Senator REID for their work on this bill. As always, they have taken limited resources and produced a well-balanced bill. That's a big challenge given the great needs our country faces in infrastructure, water, and energy. They have worked hard to understand the needs of my State and every State, and I thank them. I also thank the subcommittee staff. Clay, who is now at the White House, Drew, Tammy, Roger and Nancy do a remarkable job dealing with the thousands of requests from Members, and I thank them as well.

I want to begin by talking about the environmental cleanup program at the Department of Energy. That program is charged with cleaning up nuclear sites across the country, including the Hanford Nuclear Reservation in Washington State. For many years, I have had to fight the efforts of this and other administrations to underfund this critical responsibility.

This year, I am pleased that we don't have to fight for increased funding. I think that success is due to several factors. First, we have a bipartisan group of Senators who are committed to cleaning up sites in their States, and our group has pushed hard for this increased funding. In addition, we are fortunate to have the subcommittee chairman and Senator REID as allies in this effort. The Department of Energy also deserves credit for putting forward a good budget request that puts these funding issues behind us this year.

But despite the agreement on funding levels, there is another problem that is brewing which I believe threatens the effective cleanup of these sites.

Like the people of the Tri-Cities, WA, I want to make sure that dangerous waste is cleaned up. I am concerned that this administration may try to change the ground rules so it could declare victory and walk away from the

from New Mexico, to the Gulf of Mexico. It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, NM, downstream to its confluence with the Rio Grande in south Texas. It is now completely extinct in the Pecos River and its numbers have severely declined within the Rio Grande. Currently, the species occupies only about five percent of its known historic range.

The parties to the mediation, the Governor's office; environmental groups; the conservancy district; the Bureau of Reclamation; several Indian Pueblos; the State water engineer; and the city of Albuquerque should be able to continue their negotiations to find a mutually agreeable solution to this problem, without jeopardizing the underlying species protections provided by the Endangered Species Act.

Mr. LEBVIN. In May of this year, unusually heavy rainfall occurred in four counties of the Upper Peninsula of my home State of Michigan—Baraga, Gogebic, Marquette and Ontonagon Counties—causing rivers and streams throughout the area to swell out of their banks, inflicting severe and widespread damages. These four counties are not able to absorb this disaster as they have overall unemployment and poverty rates higher than the state average.

The greatest damages occurred in Marquette County where an earthen dike at Silver Lake Basin failed, sending an estimated 8 billion gallons of water cascading downstream through central Marquette County and the city of Marquette toward Lake Superior. Rapidly moving water and massive amounts of trees, logs and other debris has severely undercut many sections of the riverbank, making them unstable and creating serious public safety and environmental concerns.

Damages to one of the power generation facilities, the Presque Isle plant in the city of Marquette, resulted in shutdown for more than 30 days. Without power, two iron ore mines, which produce about 20 percent of our Nation's annual iron ore output, were shut down, idling 1,200 workers. These mines contribute nearly \$115 million in personal income annually and are two of the largest employers in Marquette County. Even this temporary shutdown has had a significant negative impact on the local, regional, State and national economies. Dozens of other area businesses, institutions and private homeowners were also seriously impacted.

Current estimates of economic damages alone to these counties, mostly to Marquette County, are calculated at over \$100 million. There have been severe impacts to roads, bridges, culverts, water control structures, utility infrastructure and environmental and ecological damage to the waterways resulting from this flooding. When the public damage figures, currently estimated at \$18-20 million, are combined with these high economic impacts

caused by the loss of electrical power generation capabilities and the environmental degradation to the area, it paints a devastating picture for this area in Michigan. Further, this area is still recovering from the flooding that occurred last year. The fact that these counties have suffered two major disasters in two years is extremely significant.

Without our assistance, Marquette and the other three counties will have a difficult, if not impossible, task of recovering from this disaster. And the health, safety, economic vitality, and quality of life of the communities and their citizens will certainly suffer for years to come.

I urge my colleagues to support this request for \$125 million in emergency funding for flood damage remediation assistance.

Mr. DOMENICI. Mr. President, I heretofore indicated there would be a vote on a McCain amendment preceding final passage. The Senator has sent word that he no longer desires to offer his amendment. He withdraws it. That means there are no amendments pending. We are ready to go to final passage.

I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that following the passage of the bill, the Senate insist on its amendment, request a conference with the House on the disagreeing votes, and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. ALLARD) is necessarily absent.

I further announce that the Senator from Oregon (Mr. SMITH) is absent because of a death in the family.

Mr. REID. I announce that the Senator from Louisiana (Mr. BREAUX), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

(Rollcall Vote No. 350 1.e.g.)

YEAS—92

Alaska	Dodd	Loft
Alexander	Dole	Lugar
Allen	Domenici	McCain
Baucus	Dorgan	McConnell
Bayh	Durbin	Mikulski
Bennett	Feinstein	Murkowski
Biden	Enslin	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Flavio	Nelson (NE)
Boxer	Fitzgerald	Nickles
Brownback	Frist	Pyron
Bunning	Graham (NC)	Reed
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Haag	Rockefeller
Cantwell	Harkin	Santorum
Casper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Cortina	Kyl	Talent
Craig	Landrau	Thomas
Crapo	Laurenberg	Voivovich
Danforth	Leahy	Warner
Dayton	Levin	Wyden
DeWine	Lincoln	

NOT VOTING—8

Allard	Graham (FL)	Miller
Breaux	Kerry	Smith
Edwards	Lieberman	

The bill (H.R. 2754), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT No. 1722

Mr. SANTORUM. I ask unanimous consent notwithstanding the passage of H.R. 2754, the energy and water appropriations bill, it be in order to consider the Bingaman amendment which is at the desk; that the amendment be considered and agreed to, and the motion to reconsider be laid upon the table without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1722) was agreed to, as follows:

(Purpose: To improve administration of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA))

On page 51, line 13, insert before the period: "Provided, That from the funds made available under this heading for transfer to the National Institute for Occupational Safety and Health for epidemiological research.

Vol